

# IN THE ACT

MAKING MARKETS WORK WELL

ISSUE 5 | OCTOBER 2019 - JANUARY 2020

## GLAMOUR AT A PRICE

ONLINE SHOE RETAILER ORDERED TO STOP MISLEADING CONSUMERS INTO RECURRING MEMBERSHIP SUBSCRIPTION

## SUBSCRIPTION TRAP

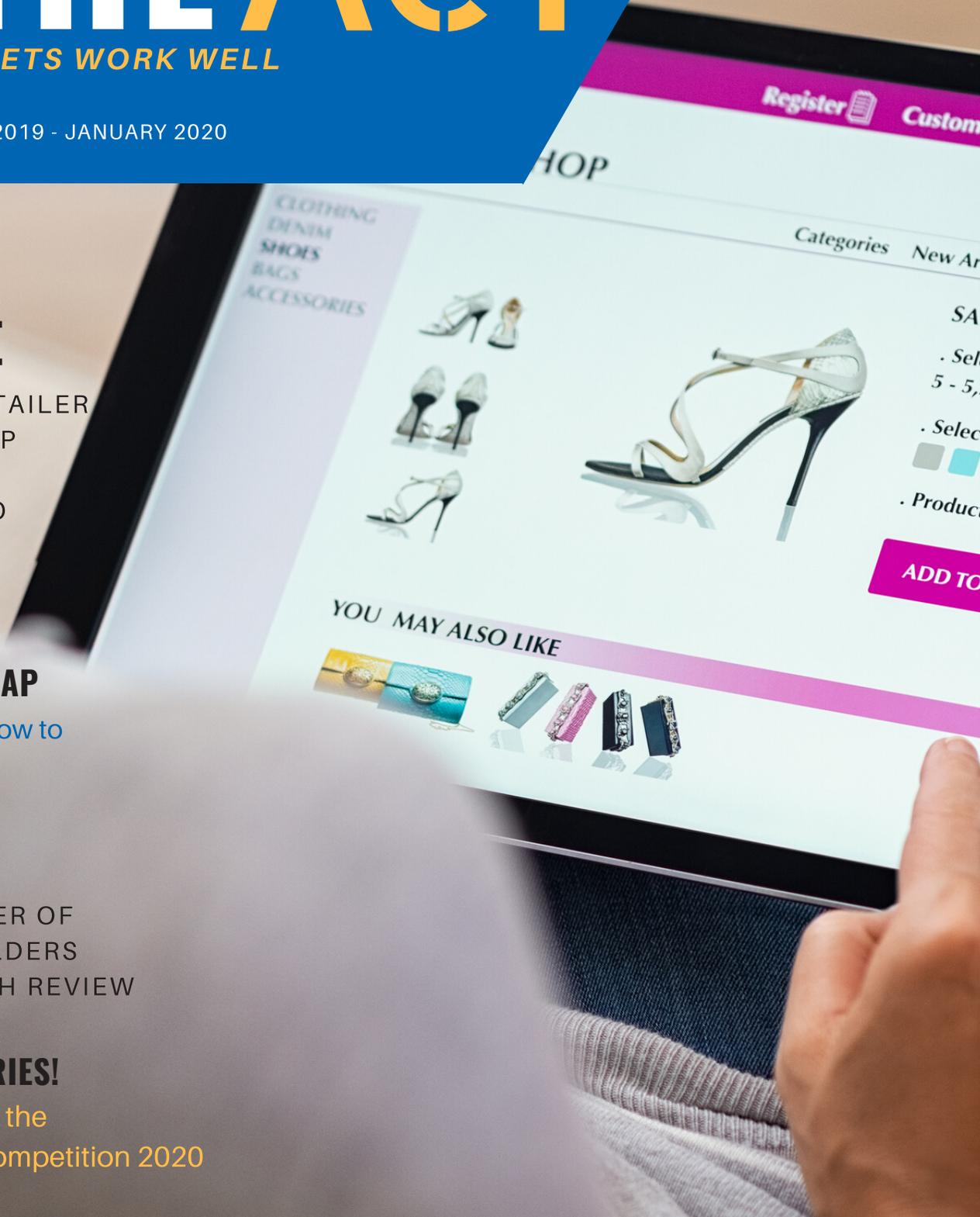
What you need to know to protect yourself

## DEEP DIVE

PROPOSED MERGER OF KOREAN SHIPBUILDERS GOES TO IN-DEPTH REVIEW

## CALLING FOR ENTRIES!

Win up to \$3,000 in the CCCS-ESS Essay Competition 2020





# CE's NOTE

SIA AIK KOR  
CHIEF EXECUTIVE  
COMPETITION AND CONSUMER COMMISSION OF SINGAPORE

CCCS is pleased to usher in the new year with readers of In The Act. The start of 2020 for CCCS was marked with a successful injunction application to stop online retailer “Fashion Interactive” and its director from misleading consumers into signing up for a recurring subscription, an unfair trade practice known as a “subscription trap”.

On the competition front, CCCS has just issued a Proposed Infringement Decision against three contractors for bid rigging of quotations to provide civil and electrical works for Wildlife Reserves Singapore.

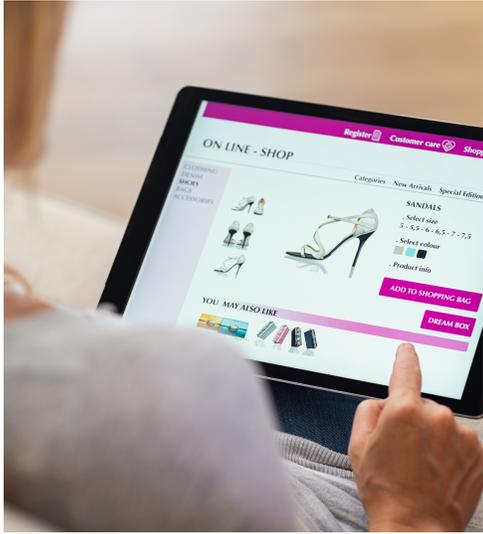
Merger assessments in the last quarter saw the acquisition of Food Junction Management Pte Ltd by Bread Talk Group Limited, and the conditional approval of the acquisition involving Innovative Diagnostics Pte Ltd and Quest Laboratories Pte Ltd with commitments. Separately, CCCS has raised competition concerns on the proposed merger of two Korean shipbuilders, which is now undergoing an in-depth review.

On the research front, CCCS published a research paper underlining the use of Fair, Reasonable and Non-Discriminatory (“FRAND”) commitments to resolve competition concerns.

In collaboration with the Economic Society of Singapore, we have kick-started our biennial essay competition. The theme for this year is “Free Market and Buyers Beware? Where are we today and what is the optimal level of government intervention to protect competition and consumers in Singapore?”. I encourage readers to participate in the competition.

I am also happy to welcome a new Commission member, Ms. Loo Siew Yee, Assistant Managing Director (Policy, Payment and Financial Crime), Monetary Authority of Singapore, who joined in January 2020. I hope you enjoy this issue of In The Act, and we look forward to working with you to make markets work well.

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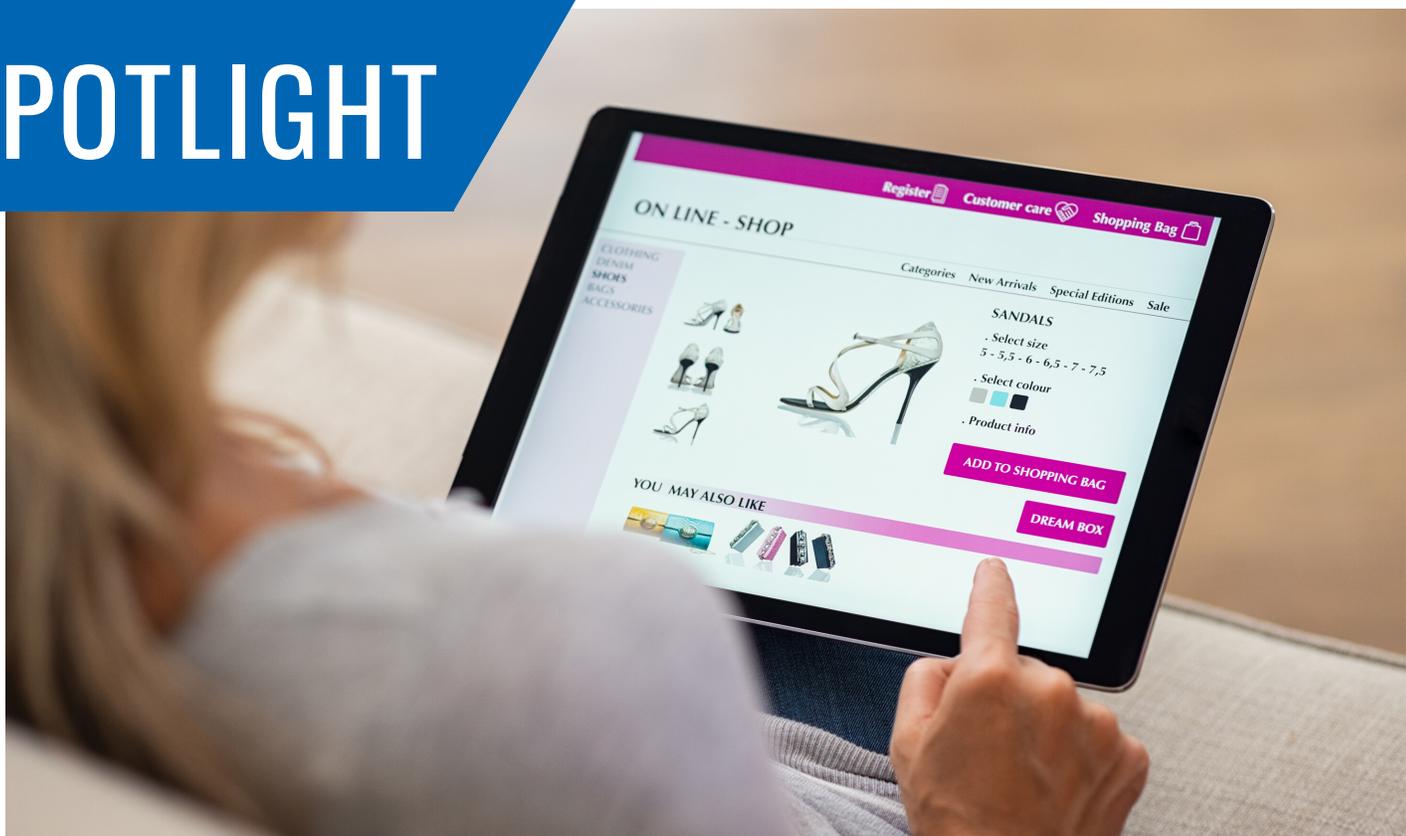
## ABOUT CCCS

The Competition and Consumer Commission of Singapore ("CCCS") is a statutory board of the Ministry of Trade and Industry. CCCS administers and enforces the Competition Act (Cap. 50B) which empowers CCCS to investigate and adjudicate anti-competitive activities, issue directions to stop and/or prevent anti-competitive activities and impose financial penalties. CCCS is also the administering agency of the Consumer Protection (Fair Trading) Act (Cap. 52A) or CPFTA which protects consumers against unfair trade practices in Singapore. Our mission is to make markets work well to create opportunities and choices for business and consumers in Singapore.

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## GLAMOUR AT A PRICE

### Fashion Interactive ordered to stop unfair trade practices

Fashion Interactive Pte. Ltd. ("Fashion Interactive") and its director, Mr. Magaud Olivier Georges Albert ("Mr. Magaud") have been issued an order by the State Courts to cease unfair trade practices which misled consumers into signing up for a recurring membership subscription on its website myglamorous.sg.

#### Background

CCCS applied to the State Courts on 28 November 2019 to obtain an injunction against Fashion Interactive and Mr. Magaud to stop them from engaging in the unfair trade practice known as "**subscription trap**" (*click to read infographics on 'what is a subscription trap?'*).

The Consumers Association of Singapore ("CASE") had earlier intervened to help affected consumers obtain refunds for the charges made by Fashion Interactive to their credit/debit cards.

However, CASE continued to receive new complaints about Fashion Interactive charging consumers recurring monthly membership fees without their knowledge or consent. CASE issued a Consumer Advisory highlighting the complaints against Fashion Interactive in January 2019.

[Read more >>](#)

A “**subscription trap**” misleads consumers into signing up for a recurring subscription by giving the impression that they are only making a one-off purchase of goods and/or services. If consumers do not cancel such subscriptions, typically within a grace period, they would be liable for recurring charges. The use of “subscription traps” contravenes the Consumer Protection (Fair Trading) Act (“CPFTA”).

### Investigation and Findings

Following a referral from CASE, CCCS investigated and found that Fashion Interactive had not sufficiently disclosed key information to consumers and consumers were misled into purchasing a membership subscription with recurring monthly fees. Mr. Magaud had also directed the design of the advertisements and myglamorous.sg website to focus on the discounts and shoes, and not on the membership subscription and its recurring monthly fees.

Throughout the purchase process, there was no notice to consumers that they were unable to purchase shoes at the advertised price without first subscribing to Fashion Interactive’s “VIP Club” membership with recurring monthly fees. In addition, consumers were led to believe that they were consenting to a one-off purchase of shoes.

### Court Order

The Court Order prohibits Fashion Interactive from misleading consumers into signing up and/or continuing with a subscription service requiring payment or recurring payment. Mr. Magaud is also prohibited from abetting Fashion Interactive to mislead customers into doing the same.

Under the Court Order, Fashion Interactive must do the following for three years:

- Display the details of the prohibition on the landing page of its website;
- Notify customers of the prohibition before entering into a contract; and
- Include in every invoice or receipt that a prohibition has been granted against it.

### What should retailers do?

Retailers should provide clear and accurate information on the price of goods and services, including costs such as subscription fees, in their advertisement. Retailers should also make key terms and conditions prominent, accessible and easy to read.



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# SPOTLIGHT



## FISHY BUSINESS

### Contractors alleged to have rigged bids submitted to WRS

On 21 January 2020, CCCS issued a Proposed Infringement Decision (“PID”) against the following companies for infringing section 34 of the Competition Act:

- Shin Yong Construction Pte. Ltd.;
- Geoscapes Pte. Ltd.; and
- Hong Power Engineering Pte. Ltd.

The companies were found to have participated in anti-competitive agreements to rig the bids submitted for tenders and quotations called by Wildlife Reserves Singapore (“WRS”).

In April 2016, following a complaint from WRS, CCCS started investigations into allegations of bid rigging of civil and electrical works for WRS’s attractions - the Jurong Bird Park, Night Safari, Singapore Zoo and River Safari.

CCCS found that the companies had exchanged bid information and coordinated their bids for tenders and quotations called by WRS, to create the false impression that independent competitive bids were submitted when they were not.

The companies have 5 weeks from the receipt of the PID to make representations to CCCS.

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# SPOTLIGHT



## DEEP DIVE

### Proposed merger of Korean shipbuilders goes to in-depth review

CCCS has raised competition concerns on the proposed merger between Korea Shipbuilding & Offshore Engineering Co., Ltd. (“KSOE”) and Daewoo Shipbuilding & Marine Engineering Co., Ltd. (“DSME”) following the completion of its preliminary review.

Based on information furnished by KSOE and feedback from third parties, CCCS was unable to conclude that the proposed merger would not raise competition concerns. In particular, industry feedback suggests that KSOE and DSME are currently two of the largest suppliers for the global supply of LNG carriers, and possibly large containerships and large oil tankers.

There are concerns:

- That the proposed merger will remove competition between two main suppliers of these commercial vessels, to the detriment of customers in Singapore;
- About whether alternative suppliers will be sufficiently strong competitors to the merged entity; and
- That the barriers to entry and expansion, particularly in relation to more sophisticated vessels such as LNG carriers, may be high.

Following the filing of the relevant documents by KSOE to CCCS on 23 January 2020, CCCS has commenced an in-depth review of the effect of the proposed merger.

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## WITHDRAWAL OF CAPACITY COMMITMENTS

### CCCS approves Emirates' application to remove capacity commitments

CCCS has approved the application by Emirates to remove its capacity commitments for the Singapore-Brisbane route, which was provided to CCCS on 28 March 2013, in relation to its alliance with the Qantas Airways Ltd (“Qantas”).

Emirates had applied to CCCS on 16 April 2019 to remove its entire capacity commitment of 4,956 seats per week for both inbound and outbound flights on the Singapore-Brisbane route. CCCS conducted a public consultation on the application from 13 to 24 September 2019.

In the application, Emirates provided evidence to support its claims on capacity under-utilisation, falling revenues and rising costs in relation to the Singapore-Brisbane route.

Based on information provided by Emirates, Qantas and third parties, CCCS assessed that

there remain competitive constraints on both airlines after Emirates stops flying the route.

Seat capacity will also remain adequate to meet demand for passengers whose journey terminates at Singapore or Brisbane.

CCCS assessed that the alliance will continue to have net economic benefit on air passenger services, even after the removal of Emirates’ capacity commitments for the Singapore-Brisbane route. Separately, the total base capacity for the Singapore-Melbourne route for both Emirates and Qantas remains unchanged at 8,246 seats per week.

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# SPOTLIGHT



## PRIVATE CLINICAL LABS MERGER

### CCCS grants conditional approval after accepting commitments

CCCS has granted conditional approval of Pathology Asia Holdings Pte. Ltd. (“PAH”)’s completed acquisition of Innovative Diagnostics Private Limited (“Innovative”) and Quest Laboratories Pte. Ltd. (“Quest”), after accepting commitments from PAH.

CCCS had identified competition concerns arising from the transaction, based on information furnished by PAH and third-party feedback from customers and competitors. Innovative and Quest are each other’s closest competitor pre-transaction, being the top two suppliers in the provision of IVD tests by private clinical laboratories in Singapore, to non-affiliated customers (i.e. customers without an in house/ vertically-integrated laboratory).

To address the competition concerns identified by CCCS, PAH submitted a set of commitments, which CCCS sought public feedback on from 21 June to 5 July 2019.

While third party feedback received by CCCS from industry players and customers generally agreed that the proposed commitments will achieve their objectives, they also identified some deficiencies in the proposed commitments in addressing competition concerns arising from the transaction.

After evaluating the feedback provided by third parties and the necessary revisions made by PAH, CCCS considered the final commitments, which work holistically as a package, sufficient to address the competition concerns. CCCS approved the transaction on 18 October 2019, conditional upon the implementation of and compliance with the final commitments by PAH.

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case



# SPOTLIGHT



## FOOD COURT ACQUISITION

### CCCS clears Bread Talk's proposed acquisition of Food Junction

CCCS has given the go-ahead after concluding that the proposed acquisition will not lead to a substantial lessening of competition within the relevant markets in Singapore. The proposed acquisition would see the subsidiary of Bread Talk Group Limited ("Bread Talk"), Topwin Investment Holding Pte Ltd ("Topwin"), acquire 100 per cent of the issued share capital in Food Junction Management Pte Ltd ("Food Junction").

As part of its assessment, CCCS conducted a public consultation and contacted key stakeholders including landlords, competitors, food vendors and individual consumers to gather relevant information. Most stakeholders indicated that they have no concerns with the proposed acquisition, with a few raising concerns.

CCCS found that Bread Talk and Food Junction only directly sell hot meals in a very limited number of stalls located within the food court premises they operate.

In this regard, they continue to compete with many stalls operated by third-party food vendors within their own premises as well as within other food court premises after the proposed acquisition.

Food quality and variety and price points offered by Bread Talk and Food Junction are also unlikely to be reduced post-merger as there are many competing third-party food vendors and shopping mall operators place emphasis on differentiation of food court concepts, food mix and price points.

CCCS also found that the combined market share of Bread Talk and Food Junction post-merger remains below 20%, which is considerably lower than the larger food court operators such as NTUC Kopitiam and Koufu. The merged entity may instead be able to better compete with the other larger food court operators post-merger.

In addition, the barriers to entry to set up food court operations in Singapore, as well as the barriers existing food court operators face in expanding to locations where Bread Talk and Food Junction currently operate at and/or any other locations in Singapore, are low.

There is also considerable competition not just between Bread Talk and Food Junction, but with the other food court operators, such that the two parties may not be each other's closest competitor.

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# SHOWCASE

## ARE FRAND COMMITMENTS APPLICABLE OUTSIDE SEPS?



CCCS published a research paper discussing the circumstances that give rise to the economic justification for the use of FRAND (Fair, Reasonable and Non Discriminatory) commitments in SEP (Standard Essential Patents) cases. While not unique, FRAND commitments are also present in some non-SEP cases such as those involving vertical effects in mergers and acquisitions, or abuse of dominance conduct such as refusal to supply.

While FRAND commitments may be useful in non-SEP cases, there are challenges in their application, particularly the uncertain interpretation as to what constitutes “fair, reasonable and non-discriminatory”.

Nevertheless, there is still much room for competition authorities to explore using FRAND commitments as behavioural remedies in addressing competition concerns.

To date, CCCS has dealt with two cases that involved FRAND commitments in order to resolve the competition concerns identified.

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## GCR E-COMMERCE ENFORCEMENT GUIDE



Published by the Global Competition Review (“GCR”), the GCR E-Commerce Competition Enforcement Guide draws on expertise and perspectives of competition practitioners and competition authorities around the world to provide insights on the differing approaches adopted by enforcement agencies in navigating competition issues in the digital economy.

CCCS contributed to the second edition of the E-Commerce Competition Enforcement Guide (page 217) which provided Singapore’s perspectives in the rise of e-commerce, disruptive technologies and big data.

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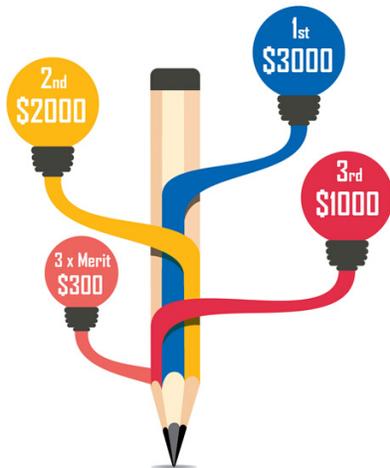


# TALKING POINT

## CCCS-ESS ESSAY COMPETITION 2020

### CCCS - ESS ESSAY COMPETITION 2020

SUBMISSION DEADLINE: 22 MAY 2020



#### Free Market and Buyers Beware?

Where are we today and what is the optimal level of government intervention to protect competition and consumers in Singapore?

Categories: School • Open

The CCCS-ESS Essay Competition is back for its 4th run! Organised by CCCS in collaboration with the Economic Society of Singapore ("ESS"), the theme for this year is **"Free Market and Buyers Beware? Where are we today and what is the optimal level of government intervention to protect competition and consumers in Singapore?"**

The terms and conditions, as well as entry forms for the essay competition are available on the CCCS website. The closing date for the submission of entries is 22 May 2020.

Scan to find out more about the competition and participate!



## FUEL KAKI

Fuel Kaki is a retail fuel price comparison website developed by the Consumers Association of Singapore ("CASE") to facilitate comparison of effective prices of retail fuel for consumers.

A screenshot of the Fuel Kaki website. The top navigation bar includes 'Home', 'Promotions', 'Price Estimator', 'About Us', and 'Contact'. The main content area features a '4 steps is all it takes!' section with a 'START' button. Below this is a disclaimer: 'Disclaimer: While CASE takes reasonable efforts to ensure the accuracy of the data, CASE does not warrant its accuracy. In the event of any discrepancies, the fuel and promotional prices displayed by the respective fuel retailers at their fuel stations shall prevail. For more information, please refer to our Terms of Use.' The footer contains 'Supported by:' and 'A project by: CASE'.

Scan the QR code to start comparing fuel prices now!



# BLUEPRINT



## WHAT IS A 'SUBSCRIPTION TRAP'?

Consumers make an online transaction with a retailer, only to find out later that they have been **unwittingly locked into a subscription contract** and **end up paying recurring subscription fees** to the retailer via their credit/debit card used for the online transaction.



Often used to make consumers fall into such 'subscription traps':

- discounts
- free shipping
- free samples
- 'free trial' offers
- other promotions



Consumers who do not cancel within the 'Free Trial' period:

- become trapped in subscription contract
- are liable to make payments or recurring payments



Consumers are unaware subscription fees are involved because errant retailers:

- omit key terms & conditions
- hide them in fine print or make them not easily noticeable
- place them a number of clicks away
- use confusing terminology

## WHAT SHOULD RETAILERS DO?



### PROVIDE CLEAR AND ACCURATE INFORMATION ON PRICE OF GOODS & SERVICES

These include additional costs such as subscription fees at the onset of the advertisement or display.



### DRAW CONSUMERS' ATTENTION TO KEY TERMS & CONDITIONS OF SALE/PURCHASE

Retailers should make them prominent, accessible and easy to read.



### ADOPT 'OPT-IN' APPROACH FOR SUBSCRIPTIONS

Allow consumers to actively 'opt-in' by ticking a box that is un-ticked by default.



### STATE SUBSCRIPTION TERMS CLEARLY AND UPFRONT

Any fees involved, including recurring ones, should be stated clearly and upfront.



### INFORM CONSUMERS BEFORE FREE TRIAL ENDS

Before a free trial ends, retailers should notify consumers when they will be charged and provide clear information on the cancellation process.